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BEAUMONT RV, INC.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

* * *

BEAUMONT RV, INC.,
a California Corporation,

Plaintiff,

v.

CARBON EMERY RV, INC., a Utah
Corporation.

Defendant.

Case No. 1:22-CV-00073-AWI-HBK

**MOTION FOR ADMINISTRATIVE
RELIEF UNDER LOCAL RULE 233
TO ALLOW LATE FILING OF PAPERS
IN OPPOSITION TO DEFENDANT'S
MOTION TO DISMISS**

Complaint Filed: January 17, 2022

Plaintiff BEAUMONT RV, INC. ("Plaintiff" or "Beaumont") hereby moves for leave to
file Plaintiff's papers in opposition to the Motion to Dismiss filed by of Defendant CARBON
EMERY RV, INC. ("Defendant" or "Carbon Emery"). Copies of the proposed opposition papers
are attached hereto collectively as Exhibit A to the accompanying Declaration of Counsel Brian
Whelan.

1 **I. INTRODUCTION AND FACTUAL BACKGROUND**

2 This is an action for trademark infringement brought by Plaintiff Beaumont against
 3 defendant Carbon Emery. The complaint was filed on January 17, 2022 and served shortly
 4 thereafter. On February 8, 2022, Defendant requested, and Plaintiff stipulated to extend time by
 5 twenty-eight (28) days for Defendant to respond to the complaint (ECF 7). Thereafter, on March
 6 21, 2022, Defendant filed a Motion to Dismiss (ECF 10). Pursuant to the revised version of
 7 Local Rule 230 that went into effect on March 1, 2022, Plaintiff's opposition to the Motion to
 8 Dismiss was due fourteen (14) days after the motion was filed, i.e. by April 4, 2022. (L.R.
 9 230(c).) The previous version of Local Rule 230 called for the opposition to be filed fourteen
 10 (14) days before the hearing date, which would have been April 11, 2022. Counsel for Plaintiff
 11 was not aware of the recent change in Local Rule 230, and calendared April 11, 2022 as the date
 12 for filing the opposition (see Exhs. A, B, and C hereto). This oversight was brought to the
 13 attention of Plaintiff's counsel by defense counsel the day after the brief was due (April 5, 2022).
 14 Plaintiff's counsel thereafter requested that defense counsel stipulate to the late filing of
 15 Plaintiff's opposition, but that request was refused, resulting in the present motion for
 16 administrative relief.

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 18 **II. ARGUMENT**

19 Rule 6(b)(1)(B) of the Federal Rules of Civil Procedure governs this request: "(b)(1)
 20 When an act may or must be done within a specified time, the court may, for good cause, extend
 21 the time: . . . (B) on motion made after the time has expired if the party failed to act because of
 22 excusable neglect."

23 In this case, the standard for excusable neglect is met. The amended local rule only went
 24 into effect just over one month ago, and Plaintiff's counsel did not become aware of the change
 25 until minutes before the close of business on April 5, 2022. Before the change, the deadline for
 26 filing an opposition was based on the hearing date for the motion; it is now based on the filing
 27 date of the motion. In this instance, the difference is only a matter of one (1) week – from April
 28 4, 2022 until April 11, 2022. Further, had Defendant filed the motion within the statutory time to

1 respond, instead of with additional time granted by Plaintiff, the old rule would have been in
2 effect. Allowing the late filing of Plaintiff's opposition will still give the moving party plenty of
3 time to prepare and file a reply before the hearing date, so there is no prejudice to the moving
4 party.

5 In addition, since the underlying motion is a Motion to Dismiss, because of the strong
6 policy favoring resolving issues on the merits, rather on procedural technicalities, the Court
7 should exercise its discretion and grant the motion for Plaintiff to file the late opposition brief.
8 *Ahanchian v. Xenon Pictures, Inc.*, 624 F.3d 1253, 1259 (9th Cir. 2010).

9
10 **III. CONCLUSION**

11 Because the standard for excusable neglect has been met, and there is no prejudice to the
12 moving party, in order to promote the strong policy of resolving matters on the merits, the
13 Plaintiff's motion for leave to file late opposition papers should be granted.

14 Dated: April 8, 2022

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18 By /William K. Nelson/
WILLIAM K. NELSON
Attorneys for Plaintiff,
19 BEAUMONT RV, INC.
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CERTIFICATE OF SERVICE

I hereby certify that on April 8, 2022, the foregoing was filed using CM/ECF, which automatically sent a notification of the filing to all counsel of record.

By /William K. Nelson/
WILLIAM K. NELSON
Attorneys for Plaintiff,
BEAUMONT RV, INC.